

COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 1115 of 2001
(Old No. 778 of 1990)

Smt. Mina Kumari & another. ... **Appellants.**

Versus

Jai Singh and another. ... **Respondents.**

**Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.**

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (*in short the Act*) against the judgment and Award, dated 23-4-1990, passed in M.A.C. Petition No. 257 of 1987, Smt. Meena Kumari and another Vs. Jai Singh and another, by the Motor Accident Claims Tribunal/I Additional District Judge, Nainital (*hereinafter referred to as the Tribunal*), whereby the learned Tribunal has dismissed the claim petition of the claimant-appellants filed under Section 110-A of the Motor Vehicles Act, 1939 (*in short the Act*) holding that the accident in question was not the result of rash and negligent driving of the truck in question.

Brief facts, giving rise to this appeal, are that the claimants-appellants filed a claim petition under Section 110-A of the Old Act before the learned Tribunal for the death of deceased alleging therein that on 30.3.1987 at about 9.40 p.m., Laxmi Kant, husband of claimant no.1 and son of claimant no.2, aged about 18,1/2 years, was coming for attending his duty at Prakash Pipe and Industries Ltd. on his bicycle. He was riding his bicycle on the extreme left side of Kashipur-Moradabad road. When he reached in front of the gate of said Industries, Truck No. UGA-8385 came from Kashipur side in a fast speed and driven in rash and negligent manner, with result the deceased Laxmi Kant was hit by the said truck and he sustained grievous injuries. He was brought to Govt.

Hospital Kashipur for treatment; but he succumbed to his injuries within two hours of the said accident. The said truck was owned by Opposite Party-respondent no.2 and was insured with New India Assurance Company-respondent no.3. It is alleged that the deceased was earning Rs. 450/- per month and was a young man of 18,1/2 years having good health. Plea of longevity of life was also alleged in the petition. The claimants have mentioned that due to his death, they have suffered monetary loss of 5,86,680/- with other sufferings assessed at Rs. One lac and expenditure of Rs. 1000/- on medical treatment and funeral.

Both Opposite Party Nos. 1 and 2 have not put in appearance to contest the case, hence, case proceeded ex parte against them.

Opposite Party No.3, United India Insurance Company contested the claim petition by filing its written statement on the ground that the claim petition was not maintainable as not properly presented; that the driver of the truck in question was not driving the vehicle rashly and negligently and the accident was result of own negligence of the deceased; that the insurance company was not informed by the insured of the accident; that the petition has been filed in collusion with the driver and owner of the vehicle. It has also been pleaded that the Insurance Company is only liable when the truck owner has satisfied the Tribunal regarding registration, route permit, payment of taxes and holding of valid driving licence by the driver of the vehicle.

On the pleadings of the parties, following issues were framed by learned Tribunal:

- 1. Whether the accident took place due to rash and negligent driving of the truck bearing registration No. UGA-8385?***
- 2. Whether the accident took place due to the negligence of deceased himself?***

- 3. Whether the claimant No.2 was not dependent on the deceased?**
- 4. To what amount of compensation, if any, and against whom the claimants are entitled?**

The claimants in support of their case have filed certificate of salary of the deceased, photo copy of appointment letter issued by the employer of the deceased and have also produced claimant no.1 as P.W.1, Kamal Kant Vyas as P.W.2, Surajpal Singh as P.W.3 and Const. Harpal Singh as P.W. 4. On the other hand, the opposite parties have not adduced any oral or documentary evidence in support of their contentions.

The learned Tribunal hearing both the parties and considering the evidence on record, took up Issue Nos. 1 and 2 together for disposal and came to the conclusion that there was no negligence or rashness on the part of the truck driver, rather it was of the view that the accident in question was the result of negligence on the part of the deceased. He accordingly decided these issues against the claimants. On issue no.3, the learned Tribunal came to the conclusion that the claimant no.2, father of the deceased, was not dependent on the deceased and decided the Issue against the claimant no.2. On Issue No.4, the learned Tribunal, after considering the material before it, came to the conclusion that the deceased would have spent Rs. 300/- per month on claimant no.1 and accordingly, it was of the opinion that the loss suffered by claimant no.1 due to death of her husband comes to Rs. 1,44,000/-. However, the learned Tribunal held that since the motor accident in question was not the result of rashness and negligence on the part of truck driver, the claimant no.1, Smt. Meena Kumari, is not entitled to any compensation under Section 110-A of the Old Act. The Tribunal, therefore, dismissed the claim petition, which gave rise to the present appeal.

The claimant-appellants have assailed the impugned judgment and award mainly on the ground that the learned Tribunal

has fallen in error in holding that there was no negligence on the part of opposite party no. 1 Jai Singh, the driver of the Truck in question. The findings of the learned Tribunal on Issue Nos. 1 and 2 are not sustainable. It may be observed here that in the present case, the driver and owner of the truck in question had not put in appearance and the case proceeded ex-parte against them. Plea of rash and negligence is not open to the insurer and the scope of defence is limited to the Insurance Company under the provisions Section 96 of the Motor Vehicles Act, 1939.

We have heard the learned counsel for the appellants, Mr. T.A. Khan and learned counsel for the respondent, Insurance Company, Mr. Prabhat Pandey, and have gone through the evidence on record as well as the impugned judgment and award.

As mentioned earlier, the case proceeded ex-parte against the driver and owner of the Truck in question. The petition was contested by the Insurance Company-respondent no.3 alone before the learned Tribunal. P.W.3, Surajpal Singh, an employee of the industry in which the deceased was employed, has been produced as an eye witness of the accident on behalf of the claimants. In his statement on oath, this witness has given categorical statement that he had seen the truck in question coming at high speed and in negligent manner from the side of Kashipur and the deceased Laxmi Kant was on his right side. The truck driver even did not blow the horn when the accident had taken place. It may be observed that the Insurance Company cannot take defence except as provided under Section 96 of the Old Act. Moreover, provision of Section 110-C (2-A) of the said Act was not attracted in the present case, therefore, in our opinion from the testimony of eye witness P.W.3, it was prima facie made out that the Truck in question was coming in high speed and in rash and negligent manner. From the material before us, it cannot be said that it was case of collusion between the person making the claim and the person against whom the claim is made. Moreover, the

Insurance Company has been impleaded as party on the application (14-C) moved by the claimants themselves. We are of the view that the cross-examination of the eye witness on behalf of the Insurance Company regarding rashness and negligence is not very material. Further, the statement of this witness in his examination-in-chief that the truck in question was coming in high speed and negligently has not been challenged in the cross-examination.

In view of the above discussion, the findings recorded by the learned Tribunal on Issue Nos.1 and 2 are liable to set aside and it is held that the accident in question was the result of rash and negligence on the part of the driver of Truck No. UGA-8385 and not due to negligence of the deceased. The learned Tribunal has already held on Issue No.4 that the claimant no.1 is entitled to compensation worth Rs. 1,44,000/-, provided it is found that the motor accident was the result of rash and negligent driving by the driver of the Truck. In view of our findings on Issue Nos. 1 and 2, the claimant-appellant Smt. Meena Kumari is entitled to compensation of Rs. 1,44,000/- (one lac forty-four thousand), as observed by the learned Tribunal. In addition, in the circumstances of the case, the claimant Smt. Meena Kumari shall get simple interest @ 6% per annum on the compensation amount from the date of petition (25.09.1987) till payment.

Accordingly, the appeal is allowed. The impugned judgment and award is set aside. Claim Petition No. 257 of 1987 is allowed in favour of the claimant-appellant no.1 for compensation of Rs. 1,44,000/- along with interest @ 6% per annum, as observed above, as against the respondents jointly and severally. No order as to costs.

11-08-2004
RCP

(B.S. Verma, J.) (P.C. Verma, J.)